



Jerrick Hernandez <jhernandez@guamopa.com>

Reply to Protest Decision

GPE INC <guampacific@gmail.com>

Fri, Oct 22, 2021 at 1:13 PM

To: Jerrick Hernandez <jhernandez@guamopa.com>

Cc: "Camacho, Anthony" <arcamacho@triton.uog.edu>, "Gumataotao, Emily" <eggumataotao@triton.uog.edu>

Dear Mr. Hernandez,

Please see attachments on Reply to Decision and confirm receipt of this email.

Very Respectfully,
Sedfrey M. Linsangan
President
Guam Pacific Enterprise, Inc.
Tel: (671) 649-6994/7/8



This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error, please notify the system manager. This message contains confidential information and is intended only for the individual named. If you are not the named addressee, you should not disseminate, distribute or copy this email. Please notify the sender immediately by email if you have received this email by mistake and delete this email from your system. If you are not the intended recipient, you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited.

 **Reply to Protest Decision.pdf**
8849K

Sedfrey M. Linsangan
P.O. Box 23128 Barrigada
Guam 96921
Pro Se


BEFORE THE PUBLIC AUDITOR
PROCUREMENT APPEALS
TERRITORY OF GUAM

In the Appeal of
Guam Pacific Ent Inc -
Appellant
v.
University of Guam
Defendant

Appeal No: OPA-PA 21-011
Reply to Protest Decision
Supplemental Arguments

Appellant, Sedfrey M. Linsangan provides
his Reply against the Protest Decision
of U.O.G.

Dated: Oct. 22, 2021

Respectfully Submitted

Sedfrey M. Linsangan
Appellant,
Pro Se

Memorandum of Points & Authorities

I. VOG not acting in good faith

Defense erred by dragging the President of V.O.G into this case that placed him in a predicament and precarious situation. The IFB rules and regulation of VOG is outdated and the President did not administer the bid. Purchasing Agency or the Supply Administrator is responsible pursuant to (Section 12102 of CH 12 of 2 GAR) and Section 5030 of CH.5) Please see Exhibit XI. Appeal form of OPA in part III provides that Decision being appealed by Chief Procurement Officer, Director of Public Works and Head of Purchasing Agency. VOG's rules should be updated consistent with the law.

11. Argument of VOG is irrational, illogical and pointless.

VOG knew that they need purifier to purify the air in classrooms, offices, auditorium and other indoor spaces but selected a purifier that is specifically for homes only. It is not for commercial purposes that had heavy traffic such as the University class rooms, etc. The purifier of Docomo is deficient in many ways and it did not meet the requirements and criteria set forth in the Invitation for Bid.

The only criteria it met is the product specification but not the Background and intended purpose in pages 20 of the IFB. VOG erred because they just copy the specs of Aura Air which is a violation of procurement law. (Section 5268 of CA)

and Section 5265, Salient Features and Maximum Practicable Competition. (Please see exhibit XII).

Method of Award stipulate that the President or Head of purchasing agency have the authority to award or reject bids if he determines it is in the public interest. In this case, they abuse their discretion because it is not in the public interest to select or award to Docomo their offer that is specifically for home only. It is a wrong product and it does not protect the health of students, workers and public as specified in Recipient's Funding Certification and Agreement, 2nd paragraph that pertains to health care. (Please see Exhibit XIII)

III. UOB violates Buy American Act

Defense invoked on Buy American Act of 1933 that is outdated because it was amended. The arguments are not germane due to authorizing statutes explicitly provide for the application of the Act.

In April 18, 2017, President Trump issued Executive Order No. 13788. Subsection a of Section 1 provides that all statutes, regulations, rules and Executive Order relating to Federal procurement or Federal Financial assistance

Subsection (a) of Section 2 provides that in order to promote economic and national security and to help stimulate the economic growth, create good jobs at decent wages, strengthen our middle

class and support the the American manu-
facturing It shall be the policy
of the executive branch to maximize,
consistent with law through terms and
conditions of Federal financial assistance
awards

Please see Executive Order 13858,
13881 that further mandated the Buy Ame-
rican Act. (Please See Exhibit XIV, Exe-
cutive Orders 13788, 13858, 13881, Section 8302

VOG used the CARES Act funding
to purchase the purifier that is not made
in the USA. They are not in compliance
with Attachment A to Recipient's CARES
Funding Certification and Agreement. They
did not comply in the 1st paragraph to
comply with all applicable Federal laws,

executive orders and regulation. Please
See Exhibit XV.

I.V. \$25.00 Protest is timely due to
Rational basis and Extraordinary Circumstances
of the case.

I raised my objection on the \$25.00 fee
and received a response on May 5, 2021.


Please see Exhibit XVI. She or Emily cannot
provide me the written authorization of
the President that authorized the \$25.00
fee. She did not respond to me or informed
me that I have to write a letter to the
President regarding my concern. I do not
have a copy of the IFB Instruction to
Bidder because she wanted me to pay first
before she will download or sent the
PDF file. Therefore my concern is timely
due to V.O.G. failed to inform me of
my right.

VOG procurement did not email or inform me the Bid Status after 3 months. I filed my Notice of Protest on Sept. 7 to VOG and filed my Notice of Appeal to OPA on Sept. 15. I did not file 7 days early because there is no provision in the Bid documents that I have to wait for 14 days before I can file an Appeal to OPA, neither I was informed by VOG Procurement. Even OPA have no adopted Rules on appeals relative to 14 days.

The national basis here is VOG Procurement never responded to me on Bid Status. They already awarded on June 7 and could be installed after 2 weeks but acted in bad faith by not informing me or other vendors.

What made the Defense think that LOG will respond or make a decision on my protest. They are not aware or ignored their duties thinking that I will just stop. The extraordinary circumstances that had transpired grant me the rational basis to file early. I should be exempted from filing early even there is no decision yet due to conduct of LOG procurement.

Dated: Oct. 22, 21

Respectfully Submitted
Sedfrey M Linsanga

Pro Se

§ 12102. Definitions.

As used in this Chapter, unless the context in which they are used requires a different meaning, the following definitions shall apply.

→ (a) Appellant means an aggrieved person who Appeals to the Public Auditor a decision of the Chief Procurement Officer, the Director of Public Works, the head of a Purchasing Agency, or the designee of such officer.

(b) Interested Party means an actual or prospective bidder, offeror, or contractor who appears to have a substantial and reasonable prospect of receiving an award if the Appeal is denied.

(c) Protestor means any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract and who filed a protest, or who has received a notice of suspension or debarment. Such a protestor is sometimes referred to herein as an "aggrieved person."

(d) A prospective bidder, contractor or offeror is one who will actually submit a bid, contract or otherwise offer his services if such person would prevail in the Appeal.

→ (e) The affected agency or using agency is that agency that has used or is intending to use the supplies, services, or construction, the procurement of which is being Appealed. If more than one affected using agency is involved, the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency may designate one or more representatives to be consulted in respect to this action.

(f) File and submit mean receipt in the Office of the Public Auditor, the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency, as the case may be.

(g) In computing any period of time prescribed by these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, a Sunday, a legal holiday or when the Office of the Public Auditor is closed by order of the Governor, in which event a period extends until the end of the next day which is not a Saturday, a Sunday, a legal holiday or when the Office is closed. When the period of time prescribed or allowed

5 GCA GOVERNMENT OPERATIONS
CH. 5 GUAM PROCUREMENT LAW

University of Guam, the Department of Education, and the Guam Memorial Hospital Authority.

(l) Grant means the furnishing by the Territory of assistance, whether financial or otherwise, to any person to support a program authorized by law. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies, services or construction; a contract resulting from such an award is not a grant but a procurement contract.

(m) May denotes the permissive.

(n) Person means any business, individual, union, committee, club, other organization or group of individuals.

(o) Procurement means buying, purchasing, renting, leasing or otherwise acquiring any supplies, services or construction. It also includes all functions that pertain to the obtaining of any supply, service or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.



(p) Procurement Officer means any person duly authorized to enter into and administer contracts and make written determinations with respect thereto. The term also includes an authorized representative acting within the limits of authority.



(q) Purchasing agency means any governmental body other than the Chief Procurement Officer or the Director of Public Works which is authorized by this Chapter or its implementing regulations, or by way of delegation from the Chief Procurement Officer, to enter into contracts.



(r) Regulation shall have the meaning given in the Administrative Adjudication Law.

(s) Services means the furnishing of labor, time or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include any form of employment relationship with the government or collective bargaining agreements. Services also includes printing and processing for printing finished products, such as books, reports,

§ 5265. Maximum Practicable Competition.

All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the Territory's needs, and shall not be unduly restrictive.

SOURCE: GC § 6965.5. MPC § 4-205.



§ 5266. Specifications Prepared by Architects and Engineers.

The requirements of this Article regarding the purposes and nonrestrictiveness of specifications shall apply to all specifications, including, but not limited to, those prepared by architects, engineers, designers and draftsmen for public contracts.

SOURCE: GC § 6965.6. MPC § 4-206.



§ 5267. Publication of Source of Specifications.

The specifications contained in any invitation for bids or request for proposals, and any amendment thereto, for the procurement of supplies shall identify the person responsible for drafting the specifications and any persons, technical literature or manufacturer's brochures relied upon by the responsible person in drafting the specifications.

SOURCE: GC § 6965.7 added by P.L. 18-044:21 (Nov. 14, 1986).



§ 5268. Salient Features.

(a) Specifications shall not include requirements, such as but not limited to restrictive dimensions, weights or materials, which unnecessarily restrict competition, and shall include only the essential physical characteristics and functions required to meet the Territory's minimum needs.



(b) Purchase descriptions shall not specify a product having features which are peculiar to the products of one manufacturer, producer or distributor unless it has been determined in writing by the Director of the using agency that those particular features are essential to its requirements and specifying the reason that similar products lacking those features would not meet minimum requirements for the item.

Exhibit X11

**Recipient's Funding Certification and Agreement
for the Institutional Portion of the Higher Education Emergency Relief Fund
Formula Grants Authorized by Section 18004(a)(1) of the Coronavirus Aid, Relief, and
Economic Security (CARES) Act**

Sections 18004(a)(1) and 18004(c) of the CARES Act, Pub. L. No. 116-136 (March 27, 2020), authorizes the Secretary of Education ("Secretary") to allocate a maximum institutional portion of the formula grant funds in the amount of \$ \$ 2,282,349.00 (up to 50 percent of the amount authorized under Section 18004(a)(1) of the CARES Act) to University of Guam ("Recipient").

Section 18004(c) of the CARES Act allows Recipient to use up to 50 percent of the funds received to cover any costs associated with significant changes to the delivery of instruction due to the coronavirus so long as such costs do not include payment to contractors for the provision of pre-enrollment recruitment activities, including marketing and advertising; endowments; or capital outlays associated with facilities related to athletics, sectarian instruction, or religious worship (collectively referred to as "Recipient's Institutional Costs"). Section 18004(c) also requires Recipient to use no less than fifty percent of the funds received to provide emergency financial aid grants to students for expenses related to the disruption of campus operations due to the coronavirus (including eligible expenses under a student's cost of attendance such as food, housing, course materials, technology, health care, and child care). This Certification and Agreement solely concerns Recipient's Institutional Costs, as defined above.

To address Recipient's Institutional Costs, and pursuant to the Secretary's authority under the CARES Act and associated with the coronavirus emergency, as stated in Proclamation 9994 of March 13, 2020, "Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak," *Federal Register* Vol. 85, No. 53 at 15337-38 (hereinafter "Proclamation of National Emergency"), the Secretary and Recipient agree as follows:

1. The Secretary will provide Recipient funds for Recipient's Institutional Costs as authorized under Sections 18004(a)(1) and 18004(c) of the CARES Act.
2. As a condition for receiving funds for Recipient's Institutional Costs, Recipient must have entered into the Funding Certification and Agreement for Emergency Financial Aid Grants to Students under the CARES Act. Recipient may, but is not required to, use funds designated for Recipient's Institutional Costs to provide additional emergency financial aid grants to students for expenses related to the disruption of campus operations due to coronavirus. If Recipient chooses to use funds designated for Recipient's Institutional Costs to provide such emergency financial aid grants to students, then the funds are subject to the requirements in the Funding Certification and Agreement for the Emergency Financial Aid Grants to Students under the CARES Act, entered into between Recipient and the Secretary.
3. The Secretary urges Recipient to devote the maximum amount of funds possible to emergency financial aid grants to students, including some or all of the funds earmarked for Recipient's Institutional Costs, especially if Recipient has significant endowment or other resources

41 USC Ch. 83: BUY AMERICAN

From Title 41—PUBLIC CONTRACTS
Subtitle IV—Miscellaneous

CHAPTER 83—BUY AMERICAN

- Sec. 8301. Definitions.
- 8302. American materials required for public use.
- 8303. Contracts for public works.
- 8304. Waiver rescission.
- 8305. Annual report.

§8301. Definitions

In this chapter:

(1) **PUBLIC BUILDING, PUBLIC USE, AND PUBLIC WORK.**—The terms "public building", "public use", and "public work" mean a public building of, use by, and a public work of, the Federal Government, the District of Columbia, Puerto Rico, American Samoa, and the Virgin Islands.

(2) **UNITED STATES.**—The term "United States" includes any place subject to the jurisdiction of the United States.

(Pub. L. 111–350, §3, Jan. 4, 2011, 124 Stat. 3830.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8301	41:10c.	Mar. 3, 1933, ch. 212, title III, §1, 47 Stat. 1520; Pub. L. 86–70, §43, June 25, 1959, 73 Stat. 151; Pub. L. 86–624, §28, July 12, 1960, 74 Stat. 419; Pub. L. 100–418, title VII, §7005(a), Aug. 23, 1988, 102 Stat. 1552.

In paragraph (1), the words "the Philippine Islands" are omitted because of Proclamation No. 2695 (22 U.S.C. 1394 note). The words "the Canal Zone" are omitted because of the Panama Canal Treaty of 1977. In paragraph (2), the words "when used in a geographical sense" are omitted as unnecessary.

STATUTORY NOTES AND RELATED SUBSIDIARIES

IMPLEMENTATION OF BUY AMERICAN ACT WITH RESPECT TO CERTAIN WATER RESOURCE PROJECTS

Pub. L. 100–371, title V, §508, July 19, 1988, 102 Stat. 875, provided that:

"(a) **GENERAL RULE.**—For purposes of title III of the Act of March 3, 1933 (47 Stat. 1520; [former] 41 U.S.C. 10a–10c) [see 41 U.S.C. 8301 et seq.], commonly known as the Buy American Act, a cofferdam or any other temporary structure to be constructed by the Secretary of the Army, acting through the Chief of Engineers, shall be treated in the same manner as a permanent dam constructed by the Secretary of the Army.

"(b) **APPLICABILITY.**—Subsection (a) shall only apply to contracts entered into after the date of the enactment of this Act [July 19, 1988]."

EXECUTIVE DOCUMENTS

Ex. ORD. No. 13788. BUY AMERICAN AND HIRE AMERICAN

Ex. Ord. No. 13788, Apr. 18, 2017, 82 F.R. 18837, as amended by Ex. Ord. No. 13858, §5, Jan. 31, 2019, 84 F.R. 2040, provided:

Exhibit XIV

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to ensure the faithful execution of the laws, it is hereby ordered as follows:

SECTION 1. *Definitions.* As used in this order:

(a) "Buy American Laws" means all statutes, regulations, rules, and Executive Orders relating to Federal procurement or Federal financial assistance—including those that refer to "Buy America" or "Buy American"—that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, and manufactured goods.

(b) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(c) "Petition beneficiaries" means aliens petitioned for by employers to become nonimmigrant visa holders with temporary work authorization under the H-1B visa program.

(d) "Waivers" means exemptions from or waivers of Buy American Laws, or the procedures and conditions used by an executive department or agency (agency) in granting exemptions from or waivers of Buy American Laws.

(e) "Workers in the United States" and "United States workers" shall both be defined as provided at section 212(n)(4)(E) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(4)(E)).

SEC. 2. *Policy.* It shall be the policy of the executive branch to buy American and hire American.

(a) *Buy American Laws.* In order to promote economic and national security and to help stimulate economic growth, create good jobs at decent wages, strengthen our middle class, and support the American manufacturing and defense industrial bases, it shall be the policy of the executive branch to maximize, consistent with law, through terms and conditions of Federal financial assistance awards and Federal procurements, the use of goods, products, and materials produced in the United States.

(b) *Hire American.* In order to create higher wages and employment rates for workers in the United States, and to protect their economic interests, it shall be the policy of the executive branch to rigorously enforce and administer the laws governing entry into the United States of workers from abroad, including section 212(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(5)).

SEC. 3. *Immediate Enforcement and Assessment of Domestic Preferences According to Buy American Laws.* (a)

Every agency shall scrupulously monitor, enforce, and comply with Buy American Laws, to the extent they apply, and minimize the use of waivers, consistent with applicable law.

(b) Within 150 days of the date of this order, the heads of all agencies shall:

(i) assess the monitoring of, enforcement of, implementation of, and compliance with Buy American Laws within their agencies;

(ii) assess the use of waivers within their agencies by type and impact on domestic jobs and manufacturing; and

(iii) develop and propose policies for their agencies to ensure that, to the extent permitted by law, Federal financial assistance awards and Federal procurements maximize the use of materials produced in the United States, including manufactured products; components of manufactured products; and materials such as steel, iron, aluminum, and cement.

(c) Within 60 days of the date of this order, the Secretary of Commerce and the Director of the Office of Management and Budget, in consultation with the Secretary of State, the Secretary of Labor, the United States Trade Representative, and the Federal Acquisition Regulatory Council, shall issue guidance to agencies about how to make the assessments and to develop the policies required by subsection (b) of this section.

(d) Within 150 days of the date of this order, the heads of all agencies shall submit findings made pursuant to the assessments required by subsection (b) of this section to the Secretary of Commerce and the Director of the Office of Management and Budget.

(e) Within 150 days of the date of this order, the Secretary of Commerce and the United States Trade Representative shall assess the impacts of all United States free trade agreements and the World Trade Organization Agreement on Government Procurement on the operation of Buy American Laws, including their impacts on the implementation of domestic procurement preferences.

(f) The Secretary of Commerce, in consultation with the Secretary of State, the Director of the Office of Management and Budget, and the United States Trade Representative, shall submit to the President a report on Buy American that includes findings from subsections (b), (d), and (e) of this section. This report shall be submitted within 220 days of the date of this order and shall include specific recommendations to strengthen implementation of Buy American Laws, including domestic procurement preference policies and programs. Subsequent reports on implementation of Buy American Laws shall be submitted by each agency head annually to the Secretary of Commerce and the Director of the Office of Management and Budget, on November 15, 2018, 2019, and 2020, and in subsequent years as directed by the Secretary of Commerce and the Director of the Office of Management and Budget. The Secretary

Exh XIV

of Commerce shall submit to the President an annual report based on these submissions beginning January 15, 2019.



SEC. 4. *Judicious Use of Waivers.* (a) To the extent permitted by law, public interest waivers from Buy American Laws should be construed to ensure the maximum utilization of goods, products, and materials produced in the United States.



(b) To the extent permitted by law, determination of public interest waivers shall be made by the head of the agency with the authority over the Federal financial assistance award or Federal procurement under consideration.

(c) To the extent permitted by law, before granting a public interest waiver, the relevant agency shall take appropriate account of whether a significant portion of the cost advantage of a foreign-sourced product is the result of the use of dumped steel, iron, or manufactured goods or the use of injuriously subsidized steel, iron, or manufactured goods, and it shall integrate any findings into its waiver determination as appropriate.

SEC. 5. *Ensuring the Integrity of the Immigration System in Order to "Hire American."* (a) In order to advance the policy outlined in section 2(b) of this order, the Secretary of State, the Attorney General, the Secretary of Labor, and the Secretary of Homeland Security shall, as soon as practicable, and consistent with applicable law, propose new rules and issue new guidance, to supersede or revise previous rules and guidance if appropriate, to protect the interests of United States workers in the administration of our immigration system, including through the prevention of fraud or abuse.

(b) In order to promote the proper functioning of the H-1B visa program, the Secretary of State, the Attorney General, the Secretary of Labor, and the Secretary of Homeland Security shall, as soon as practicable, suggest reforms to help ensure that H-1B visas are awarded to the most-skilled or highest-paid petition beneficiaries.

SEC. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof;
- (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals; or
- (iii) existing rights or obligations under international agreements.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP.



EX. ORD. NO. 13858. STRENGTHENING BUY-AMERICAN PREFERENCES FOR INFRASTRUCTURE PROJECTS

Ex. Ord. No. 13858, Jan. 31, 2019, 84 F.R. 2039, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to strengthen Buy-American principles in Federal financial assistance programs, it is hereby ordered as follows:

SECTION 1. *Policy.* As expressed in Executive Order 13788 of April 18, 2017 (Buy American and Hire American) [set out above], it is the policy of the executive branch to maximize, consistent with law, the use of goods, products, and materials produced in the United States, in Federal procurements and through the terms and conditions of Federal financial assistance awards.

SEC. 2. *Definitions.* As used in this order:

(a) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(b) "Federal financial assistance" shall have the meaning and shall be interpreted consistent with the definition provided by the Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, found at section 200.40 of title 2, Code of Federal Regulations.

(c) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(d) "Infrastructure project" means a project to develop public or private physical assets that are designed to provide or support services to the general public in the following sectors: surface transportation, including roadways, bridges, railroads, and transit; aviation; ports, including navigational channels; water resources projects; energy production, generation, and storage, including from fossil-

Exh X(1)

fuels, renewable, nuclear, and hydroelectric sources; electricity transmission; gas, oil, and propane storage and transmission; electric, oil, natural gas, and propane distribution systems; broadband internet; pipelines; stormwater and sewer infrastructure; drinking water infrastructure; cybersecurity; and any other sector designated through a notice published in the Federal Register by the Federal Permitting Improvement Steering Council.

(e) "Covered program" means any program for which a focus of the statutory authorities under which it is administered is the award of Federal financial assistance for the alteration, construction, conversion, demolition, extension, improvement, maintenance, reconstruction, rehabilitation, or repair of an infrastructure project in the United States, except that this term shall not include:

- (i) programs for which providing a domestic preference is inconsistent with law; or
- (ii) programs providing Federal financial assistance that are subject to comparable domestic preferences.

(f) "Domestic Preference" means a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States, including iron and aluminum as well as steel, cement, and other manufactured products.

SEC. 3. *Application of Buy-American Principles to Covered Programs.* (a) Within 90 days of the date of this order [Jan. 31, 2019], the head of each executive department and agency (agency) administering a covered program shall, as appropriate and to the extent consistent with law, encourage recipients of new Federal financial assistance awards pursuant to a covered program to use, to the greatest extent practicable, iron and aluminum as well as steel, cement, and other manufactured products produced in the United States in every contract, subcontract, purchase order, or sub-award that is chargeable against such Federal financial assistance award.

(b) The head of each agency administering a covered program shall include in the report required by section 4 of this order a detailed explanation of the strategy, plan, or program developed to satisfy the requirement of subsection (a) of this section.

SEC. 4. *Identification of Opportunities to Maximize the Use of Buy-American Principles.* Within 120 days of the date of this order, the head of each agency administering a covered program shall identify in a report to the President, through the Assistant to the President for Trade and Manufacturing Policy, any tools, techniques, terms, or conditions that have been used or could be used, consistent with law and in furtherance of the policy set forth in section 1 of this order, to maximize the use of iron and aluminum as well as steel, cement, and other manufactured products produced in the United States in contracts, sub-contracts, purchase orders, or sub-awards that are chargeable against Federal financial assistance awards for infrastructure projects. In preparing this report, the agency head shall take care to analyze whether covered programs within the agency head's jurisdiction would support, through terms and conditions on new Federal financial assistance awards under such covered programs, the imposition of a requirement to use iron and aluminum as well as steel, cement, and other manufactured products produced in the United States in contracts, sub-contracts, purchase orders, or sub-awards that are chargeable against such Federal financial assistance awards.

SEC. 5. [Amended Ex. Ord. No. 13788, set out above.]

SEC. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof;
- (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals; or
- (iii) existing rights or obligations under international agreements.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP.



EX. ORD. NO. 13881. MAXIMIZING USE OF AMERICAN-MADE GOODS, PRODUCTS, AND MATERIALS

Ex. Ord. No. 13881, July 15, 2019, 84 F.R. 34257, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to promote the principles underlying the Buy American Act of 1933 (41 U.S.C. 8301–8305), it is hereby ordered as follows:

SECTION 1. *Policy.* (a) As expressed in Executive Order 13788 of April 18, 2017 (Buy American and Hire American) [set out above], and in Executive Order 13858 of January 31, 2019 (Strengthening Buy-American Preferences for Infrastructure Projects) [set out above], it is the policy of the United States to

buy American and to maximize, consistent with law, the use of goods, products, and materials produced in the United States. To those ends, my Administration shall enforce the Buy American Act to the greatest extent permitted by law.

(b) In Executive Order 10582 of December 17, 1954 (Prescribing Uniform Procedures for Certain Determinations Under the Buy-American Act) [41 U.S.C. 8303 note], President Eisenhower established that materials shall be, for purposes of the Buy American Act, considered of foreign origin if the cost of the foreign products used in such materials constitutes 50 percent or more of the cost of all the products used in such materials. He also established that, in determining whether the bid or offered price of materials of domestic origin is unreasonable or inconsistent with the public interest, the executive agencies shall either (1) add 6 percent to the total bid or offered price of materials of foreign origin, or (2) add 10 percent to the total bid or offered price of materials of foreign origin less certain specified costs as follows. Where the foreign bid or offer is less than \$25,000, applicable duty is excluded from the calculation. Where the foreign bid or offer is more than \$25,000, both applicable duty, and all costs incurred after arrival in the United States, are excluded from the calculation.

(c) The policies described in section 1(b) of this order were adopted by the Federal Acquisition Regulatory Council (FAR Council) in the Federal Acquisition Regulation (FAR), title 48, Code of Federal Regulations. The FAR should be reviewed and revised, as appropriate, to most effectively carry out the goals of the Buy American Act and my Administration's policy of enforcing the Buy American Act to its maximum lawful extent. I therefore direct the members of the FAR Council to consider measures that may better effectuate this policy.

SEC. 2. *Proposed Rules.* (a) Within 180 days of the date of this order [July 15, 2019], the FAR Council shall consider proposing for notice and public comment:

(i) an amendment to the applicable provisions in the FAR that would provide that materials shall be considered to be of foreign origin if:

(A) for iron and steel end products, the cost of foreign iron and steel used in such iron and steel end products constitutes 5 percent or more of the cost of all the products used in such iron and steel end products; or

(B) for all other end products, the cost of the foreign products used in such end products constitutes 45 percent or more of the cost of all the products used in such end products; and

(ii) an amendment to the applicable provisions in the FAR that would provide that the executive agency concerned shall in each instance conduct the reasonableness and public interest determination referred to in sections 8302 and 8303 of title 41, United States Code, on the basis of the following-described differential formula, subject to the terms thereof: the sum determined by computing 20 percent (for other than small businesses), or 30 percent (for small businesses), of the offer or offered price of materials of foreign origin.

(b) The FAR Council shall consider and evaluate public comments on any regulations proposed pursuant to section 2(a) of this order and shall promptly issue a final rule, if appropriate and consistent with applicable law and the national security interests of the United States. The head of each executive agency shall issue such regulations as may be necessary to ensure that agency procurement practices conform to the provisions of any final rule issued pursuant to this order.

SEC. 3. *Effect on Executive Order 10582.* Executive Order 10582 is superseded to the extent that it is inconsistent with this order. Upon the issuance of a final rule pursuant to section 2 of this order, subsections 2(a) and 2(c) of Executive Order 10582 are revoked.

SEC. 4. *Additional Actions.* Within 180 days of the date of this order, the Secretary of Commerce and the Director of the Office of Management and Budget shall, in consultation with the FAR Council, the Chairman of the Council of Economic Advisers, the Assistant to the President for Economic Policy, and the Assistant to the President for Trade and Manufacturing Policy, submit to the President a report on any other changes to the FAR that the FAR Council should consider in order to better enforce the Buy American Act and to otherwise act consistent with the policy described in section 1 of this order, including whether and when to further decrease, including incrementally, the threshold percentage in subsection 2(a)(i)(B) of this order from the proposed 45 percent to 25 percent. The report shall include recommendations based on the feasibility and desirability of any decreases, including the timing of such decreases.

SEC. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof, including, for example, the authority to utilize non-availability and public interest exceptions as delineated in section 8303 of title 41, United States Code, and 48 CFR 25.103; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

EXH XIV

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP.



§8302. American materials required for public use

(a) IN GENERAL.—

(1) ALLOWABLE MATERIALS.—Only unmanufactured articles, materials, and supplies that have been mined or produced in the United States, and only manufactured articles, materials, and supplies that have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States, shall be acquired for public use unless the head of the department or independent establishment concerned determines their acquisition to be inconsistent with the public interest or their cost to be unreasonable.

(2) EXCEPTIONS.—This section does not apply—

- (A) to articles, materials, or supplies for use outside the United States;
- (B) if articles, materials, or supplies of the class or kind to be used, or the articles, materials, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and are not of a satisfactory quality; and
- (C) to manufactured articles, materials, or supplies procured under any contract with an award value that is not more than the micro-purchase threshold under section 1902 of this title.

(b) REPORTS.—

(1) IN GENERAL.—Not later than 180 days after the end of each of fiscal years 2009 through 2011, the head of each Federal agency shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report on the amount of the acquisitions made by the agency in that fiscal year of articles, materials, or supplies purchased from entities that manufacture the articles, materials, or supplies outside of the United States.

(2) CONTENTS OF REPORT.—The report required by paragraph (1) shall separately include, for the fiscal year covered by the report—

- (A) the dollar value of any articles, materials, or supplies that were manufactured outside the United States;
- (B) an itemized list of all waivers granted with respect to the articles, materials, or supplies under this chapter, and a citation to the treaty, international agreement, or other law under which each waiver was granted;
- (C) if any articles, materials, or supplies were acquired from entities that manufacture articles, materials, or supplies outside the United States, the specific exception under this section that was used to purchase the articles, materials, or supplies; and
- (D) a summary of—
 - (i) the total procurement funds expended on articles, materials, and supplies manufactured inside the United States; and
 - (ii) the total procurement funds expended on articles, materials, and supplies manufactured outside the United States.

(3) PUBLIC AVAILABILITY.—The head of each Federal agency submitting a report under paragraph (1) shall make the report publicly available to the maximum extent practicable.

(4) EXCEPTION FOR INTELLIGENCE COMMUNITY.—This subsection shall not apply to acquisitions made by an agency, or component of an agency, that is an element of the intelligence community as specified in, or designated under, section 3 of the National Security Act of 1947 (50 U.S.C. 401a).¹

(Pub. L. 111–350, §3, Jan. 4, 2011, 124 Stat. 3831.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8302	41:10a.	Mar. 3, 1933, ch. 212, title III, §2, 47 Stat. 1520; Pub. L. 100–418, title VII, §7005(b), Aug. 23, 1988, 102 Stat. 1553; Pub. L. 103–355, title IV, §4301(b), Oct. 13, 1994, 108 Stat. 3347; Pub. L. 110–28 title VIII, §8306, May 25, 2007, 121 Stat. 211.

In subsection (a), the words "Notwithstanding any other provision of law" are omitted as unnecessary. In subsection (b)(1), reference to fiscal years 2007 and 2008 is omitted as obsolete.

Exh XIV

**Attachment A to Recipient's Certification and Agreement
for an Award under Section 18004(a)(2) of the
Coronavirus Aid, Relief, and Economic Security (CARES) Act**

Recipient assures and certifies the following:

- Recipient will comply with all applicable assurances in OMB Standard Forms 424B and D (Assurances for Non-Construction and Construction Programs), including the assurances relating to the legal authority to apply for assistance; access to records; conflict of interest; nondiscrimination; Hatch Act provisions; labor standards; Single Audit Act; and the general agreement to comply with all applicable Federal laws, executive orders and regulations.
- With respect to the certification regarding lobbying in Department Form 80-0013, no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making or renewal of Federal grants under this program; Recipient will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," when required (34 C.F.R. Part 82, Appendix B); and Recipient will require the full certification, as set forth in 34 C.F.R. Part 82, Appendix A, in the award documents for all subawards at all tiers.
- Recipient will comply with the provisions of all applicable acts, regulations and assurances; the following provisions of Education Department General Administrative Regulations (EDGAR) 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99; the OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485; and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1840-0843. The time required to complete this information collection is estimated to be 2,561 total burden hours. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: Hilary Malawer, 400 Maryland Avenue, SW. Washington, D.C. 20202.

EXHIBIT XV ✓



GPE INC <guampacific@gmail.com>

Re: 05-05: UOG Bid No. B21-10 Air Purifier (Electronic Copy Request)

1 message

GPE INC <guampacific@gmail.com>
 To: UOG Procurement Bids <uog.bids@triton.uog.edu>

5 May 2021 at 14:58

Just to add that no Gov. Guam Agency charges fees if Bid packet is sent through email.

On Wed, 5 May 2021 at 13:22, GPE INC <guampacific@gmail.com> wrote:

Hi Emily,

→ Thank you for your response. The language specified "The President may require payment of a fee" Did the President enforce that stipulation because the past Administrator did not require us to pay unless we participated in the bid? Second, did you get written authorization from the President? Please send us a copy of that authorization.

Thank you for your understanding.

Very Respectfully

Sedfrey M. Linsangan

On Wed, 5 May 2021 at 12:11, UOG Procurement Bids <uog.bids@triton.uog.edu> wrote:

Håfa Adai & Good Afternoon Sed,

I do not see proof of receipt to send the bid package and just confirming your messages were received from Ms. Jade.

Excerpt from UOG Procurement Regulation below:

→ 3.9.6.1. DISTRIBUTION (GSA Section 3-202.06.1). Invitations for Bids or Notices of the Availability of Invitation for Bids*Where appropriate, the President may require payment of a fee or a deposit for the supplying of the Invitation for Bids.*

This has been in the UOG procurement regulations even during previous administration; Unfortunately, I am unable to answer as to why the processes were different from my predecessors.

Apologize for any inconvenience this may have caused. Once I receive your proof of receipt I will be glad to send you the electronic bid packet.

Si Yu'os ma'åse' & Have a nice day!,

Respectfully,
Emily G. Gumataotao
 SUPPLY MANAGEMENT ADMINISTRATOR
 PROCUREMENT | ADMIN & FINANCE
 Office: 671-735-2925
 Fax: 671-735-3010

Exh. XV |